

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

THE UNITED STATES OF AMERICA, et al.

ex rel. JOEL STEVENS

Plaintiffs,

v.

ATRICURE INC., ST. HELENA HOSPITAL, AND
ADVENTIST HEALTH;

Defendants.

CASE NO. 1:22-cv-284-MRB

Judge Michael R. Barrett

**ATRICURE’S MOTION FOR LEAVE TO FILE MEMORANDUM IN SUPPORT OF
ITS MOTION TO DISMISS IN EXCESS OF PAGE LIMIT**

Defendant AtriCure, Inc. (“AtriCure”) respectfully requests Leave to File a Memorandum in Support of its Motion to Dismiss the Fourth Amended Complaint in excess of the 20-page limit set forth by Local Civil Rule 7.2(a)(3) and this Court’s Standing Order on Civil Procedures.

The above-captioned case is a False Claims Act (“FCA”) action brought by a former AtriCure salesman, Joel Stevens (hereafter, the “Relator”), which broadly alleges violations of multiple provisions of federal, state, and local law. The Relator filed his original Complaint on January 10, 2017, a First Amended Complaint on June 4, 2020, and a Second Amended Complaint on December 30, 2020. *U.S. ex rel. Stevens v. AtriCure, Inc.*, Case No. 3:17-CV-00010 (W.D.N.C.), ECF Nos. 1, 24, 28. On March 15, 2021, after investigating Relator’s claims, the federal Government informed the United States District Court for the Western District of North Carolina that it and every relevant state and local entity were declining intervention, and this case was unsealed. W.D.N.C. ECF Nos. 29 and 30.

Relator filed a Third Amended Complaint, withdrawing a number of claims and theories, on August 6, 2021. W.D.N.C. ECF No. 51. On October 13, 2021, the Magistrate Judge assigned to this matter in the Western District of North Carolina granted AtriCure's motion to transfer to this Court, finding that the Western District of North Carolina had "no connection" to Relator's allegations, W.D.N.C. ECF No. 65, a decision that the District Court Judge sustained following Relator's appeal, W.D.N.C. ECF No. 69. Transfer was effectuated and this case was docketed in the Southern District of Ohio on May 24, 2022. S.D. Ohio ECF No. 70. Relator filed a Fourth Amended Complaint on July 12, 2022, S.D. Ohio ECF No. 88 (referred to hereinafter as the "Complaint" for ease of reference), "to address issues arising from the change of venue," *see* S.D. Ohio ECF No. 86.

The Complaint, running to more than 100 pages and more than 500 numbered paragraphs, alleges that AtriCure engaged in "promotional activities" in violation of the federal Anti-Kickback Statute ("AKS"), 42 U.S.C. § 1320a-7b(b), thereby causing healthcare providers to submit fraudulent claims for payment to the Government in violation of Section 3729(a)(1)(A) of the FCA (Count One) and to make false records or statements that were material to false or fraudulent claims in violation of Section 3729(a)(1)(B) of the FCA (Count Two). It also alleges that AtriCure conspired with healthcare providers to violate the FCA in violation of Section 3729(a)(1)(C) (Count Three). Counts Four through Thirty-Seven allege comparable violations of various state and local laws.

To adequately address the more than 500 paragraphs of allegations and three dozen separate causes of action included in Relator's Complaint, additional pages in excess of the twenty-page limit are necessary. AtriCure's Motion to Dismiss complies with all requirements set forth

by Local Rule 7.2 and includes a table of contents combined with a succinct, clear, and accurate summary of the principal arguments made, as well as a table of authorities.

For the foregoing reasons, AtriCure respectfully requests permission to file a Memorandum in Support of its Motion to Dismiss in excess of 20 pages, allowing a total of 37 pages (exclusive of the case caption, table of contents, signature block, and table of authorities). A proposed Order will be submitted to the Court's chambers via email.

Dated: August 17, 2022

Respectfully Submitted,

Russell S. Sayre

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Counsel for Defendant AtriCure, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2022, a copy of the foregoing was electronically filed with the Clerk of Court using the Court's electronic filing system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system, and the parties may access the filing through the Court's system.

Russell S. Sayre
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